PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2017-077-00575C

Parcel No. 181/00229-051-000

Veridian Credit Union,

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 3, 2019. Attorney Daniel L. Manning Sr. represented Veridian Credit Union (Veridian). Assistant Polk County Attorney Mark Taylor represented the Board of Review.

Veridian is the owner of a commercial property located at 1201 South Ankeny Boulevard, Ankeny. The property's January 1, 2017, assessment was set at $2,960,000, allocated as $577,100 in land value and $2,382,900 in building value.

Veridian petitioned the Board of Review claiming its assessment was not equitable as compared with the assessments of other like property and its property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(a & b). The Board of Review denied the petition.

Veridian then reasserted its claim to PAAB.

Findings of Fact

The subject property is a bank/office building, originally built in 1986, doing business as Veridian Credit Union. The property underwent a large renovation and expansion in approximately 2001. The brick building has 15,827 square feet of above-grade building area including a lobby, private offices, general office area, teller area, safety deposit box room, restrooms, and conference room. There is also an elevator.

The basement is 5833 square feet with 3642 square feet of finish that includes a break room, two restrooms, locker room, and training room. Other improvements include 1342 square feet of covered drive-through and 41,570 square feet of asphalt paving. The subject is listed as having high-quality construction (grade 2+00). The site is 4.36-acres. (Ex. A).

We note the subject property's assessment history since Veridian acquired it indicates the property has been valued between $2,730,000 (2011-15) to $2,960,000 (current assessment).

William Kalainov, Senior Commercial Credit Officer for Veridian Credit Union, testified on its behalf and gave a brief history of the subject property as well as a general overview of the Ankeny real estate market. According to Kalainov, the subject was built by John Deere Community Credit Union, a separately chartered institution and originally designed to serve more as a main bank office than a branch bank, which required more square footage and office area than the typical branch building. After a merger, the subject became a Veridian Credit Union with headquarters in Waterloo, Iowa. This ultimately changed the way the building was used.

Kalainov asserted branch banks are typically much smaller in size than the subject property and as a result the subject is not fully utilized. He described how only two or three of the subject's drive through lanes are actively used, some offices within the building serve as storage areas, and some offices are completely empty. Kalainov indicated that the most common sized branch bank Veridian has built recently was 4100 square feet compared to the subject's 15,827 square feet.

The Board of Review disputes the subject's use as a branch bank and asserts it serves more as a central or main bank office. Klavinov confirmed that in addition to all of the traditional banking spaces the building has an IT room, central region banking employee offices, and rooms for training employees. (BOR Brf. p. 7).

Kalainov further contended the site size and parking lot is much larger than normal and only increases maintenance expense without providing any additional benefits. He also believes the property is not located in a "high growth" area of Ankeny, but instead an older part of Ankeny and inferior in location to areas located east, west, or north of the subject where new construction is currently taking place.

Michael Caulfield, Appraiser for the Polk County Assessor's Office, testified on behalf of the Board of Review and gave testimony regarding the valuation of the subject property. A point of contention between the parties is how the building is designated and subsequently valued. For 2017 the property was listed solely as a bank on the property record card, but this apparently changed on the 2018 assessment at the behest of Veridian. (Ex. 1, p. 77). Caulfield believes Veridian requested the Assessor's Office review the subject's property record card for listing errors and requested the improvements be categorized by use. Caulfield further noted there are no demising walls separating any bank area from office area, but rather the 2018 assessment relied on a sketch of the floorplan Veridian provided. He testified they were attempting to determine whether designating space as bank versus office area would impact the valuation. Caulfield testified that any distinction in these areas ultimately had no effect on the assessment for 2018 because after these changes were made the indicated value for the subject by the cost approach was still greater than the assessed value.

The record includes two appraisals valuing the property as of January 1, 2017. Jerry Brookshire, Brookshire Appraisal, Des Moines, Iowa, completed an appraisal for Veridian Credit Union and testified on its behalf. (Ex. 1). Ranney Ramsey, Nelsen Appraisal Associates, Inc., Urbandale, Iowa, completed an appraisal and testified on behalf of the Board of Review. (Ex. B).

The following table summarizes the appraisers' approaches to value and their respective conclusions as of January 1, 2017. We note the property's current assessment is in between these two opinions of value.

Appraiser	Land Value	Cost Approach	Sales Approach	Income Approach	Final Opinion of Value
Brookshire	Not Developed	Not Developed	$1,680,000	$1,725,000	$1,700,000
Ramsey	$1,900,000	$3,700,000	$3,800,000	$3,800,000	$3,800,000

Brookshire

Brookshire completed the sales comparison and income approaches to value. He testified he made personal observations of the subject, researched the market, developed an appraisal, and reported his findings in a written appraisal report. He gave a description of the improvements in his appraisal report. He described the subject improvements as being a one story, steel frame building constructed in 1986 with brick veneer exterior walls and a metal roof. He stated that approximately 4987 square feet are used for bank or credit union space with the remaining 10,840 square feet consisting of general office space. The subject has five covered drive-up teller lanes and one ATM lane. Brookshire supported his conclusion through use of the 2018 Polk County Property Record Card and his personal observations.[1] Brookshire considered the quality of finish and condition average for branch bank operations.

In describing the property's neighborhood, he notes it is located in a C-2 district, which are located along major thoroughfares, and access to the area is relatively easy and convenient. (Ex. 1, p. 31). He also states that demand for additional commercial development will continue. (Ex. 1, p. 31).

Brookshire determined the subject property would be marketable as "a bank related property." (Ex. 1, p. 41). He also indicated it could be considered by "potential buyers for repurposed uses such as office space only or multi-tenant uses." (Ex. 1, p. 41).

Brookshire testified it is his opinion the building has a substantial amount of functional obsolescence because it is not being fully used. He also believes the age indicates a large amount of physical depreciation. For these two reasons, he does not believe the cost approach is indicative of the property's market value. (Ex. 1, p. 42). The Board of Review was critical of Brookshire's decision not to develop the cost approach and questioned his assertion that the subject was thirty-two years old since it had an addition and renovations completed in approximately 2001. Brookshire did not describe

[1] While the 2018 Polk County property record card is not given consideration by PAAB, we find no fault in the appraiser utilizing this information.

the expansion or renovation to the subject property in his report, but alleges he considered the remodel when deciding whether to do the cost approach.

Though he did not develop an opinion of site value, Brookshire testified about several land sales he considered during his analysis of the subject's highest and best use. These vacant land sales are located in Ankeny and two were admitted into the record; they were not mentioned in Brookshire's appraisal. (Exs. 3-4). The first sale was of a 1.39-acre site located at 2119 South Ankeny Boulevard; it sold in 2016 for $4.13 per square foot. (Ex. 3). The other property was a 1.10-acre site located at 2105 South Ankeny Boulevard; it sold in 2014 for $5.25 per square foot. (Ex. 4). Both of these sites had frontage on South Ankeny Boulevard like the subject, and 2105 South Ankeny Boulevard is a corner location like the subject. Brookshire made no adjustments to these sales nor did he opine a site value for the subject. Brookshire indicated he was aware of the land sale across the street from the subject, purchased by a convenience store and used by Ramsey in his cost approach. Brookshire did not give it weight because it was a six-year old sale and a "cherry lot" and these buyers are known to pay top dollar for locations they desire. Brookshire testified that in addition to land sales, he also considered the manner in which the site was being used with the improvements located toward the middle of the site, and also the site's much larger size than the typical branch bank property.

For his sales comparison approach, Brookshire selected five properties: two were prior bank buildings but were sold to non-bank users; three were built and used for office space. Brookshire believes there are ample sales available to reliably value the property using this approach. The following table summarizes the comparable sales. (Ex. 1, pp. 56-60).

Property	Year Built	Above Grade SF	Sale Date	Sale Price	SP/SF	Adjusted SP/SF
Subject	1986/ 2001	15,827	NA	NA	NA	NA
B1 – 1605 N. Ankeny Blvd, Ankeny	1994	15,200	Apr-16	$950,000	$62.50	$87.50
B2 – 9550 Hickman Rd, Clive	1994	18,426	Oct-15	$1,500,000	$81.41	$105.83
B3 – 3900 Westown Prkwy, WDM	1994	15,067	Feb-17	$1,341,760	$89.05	$106.86
B4 – 2850 Westown Prkwy, WDM	1993	17,110	Oct-16	$1,500,000	$87.67	$113.97
B5 – 4501 NW Urbandale Dr, Urbandale	2006	11,066	Jan-16	$1,775,000	$160.40	$115.49

Sale B1 was a multi-tenant office building located in Ankeny. It fronts on the same street as the subject but is located on the north side of Ankeny. Sale B1 had similar square footage as subject. The Board of Review was critical of this sale for its different multiple tenant office use with no banking facilities.

Sale B2 is a one-story office building with brick veneer walls and metal roof located in Clive. The Board of Review was critical of this property's industrial location and different use, but Brookshire pointed out that it fronted a busy four-lane street.

Brookshire asserted Sale B3 is a bank building similar in size, design, and quality, but lacked a basement. He believed this sale was the most similar to the subject and was his best comparable. He believed the mix of bank space to office space was similar. He noted it sold to an investor who intended to remodel it and convert it into office space. Brookshire testified on cross-examination that it was his understanding the buyer spent approximately $45,000 to demolish bank improvements, but he did not know what was spent after that. Brookshire did not adjust this comparable to reflect the work done after the purchase, and he asserted the subject would be purchased for a similar use. The Board of Review was critical that Sale B3 was not purchased for continued bank use. Notes regarding the transaction, found in Brookshire's appraisal, indicate this sale was a 1031 exchange and suffered deferred maintenance; the final sale price was reduced $50,000 for deferred maintenance. It sold for 38% less than the original asking price. (Ex. 1 pp. 102-103).

Sale B4 is a brick veneer office building located in West Des Moines. The Board of Review was again critical of its different use and location. Notes regarding the transaction, found in Brookshire's appraisal, indicate the property suffered from deferred maintenance and was a "high vacancy property," which drove the price down. (Ex. 1 p. 113).

Sale B5 was a similar sized bank building sold to a non-bank user. Brookshire believed this property was superior in quality of construction, newer, and superior in overall condition. Brookshire also believed this sale demonstrated a premium for bank space versus office space; using this sale, he believed Sales B1-B4 required upward 20% adjustments to account for the bank space in the subject property. (Ex. 1, p. 63). Additionally, he believed B1-B4 required upward 10% adjustments for basement space. (Ex. 1, p. 63). Brookshire was not aware of the costs to convert the property. Again, the Board of Review was critical of this sale because it was not purchased for continued bank use.

Brookshire only made adjustments for differences in age/condition and quality; he did not adjust for differences in site size, location, or improvement size. Brookshire stated the adjustments for quality of construction reflected the differences in use, quality of construction, and subject's basement area and finish, but his report also notes it was difficult to make accurate adjustments for these factors. (Ex. 1, p. 63). He arrived at a range of market value between $87.50 and $115.49 per square foot, and reconciled to a value for the subject of $106.00 per square foot. He concluded a value for the subject by the sales comparison approach of $1,680,000. (Ex. 1, p. 65)

Brookshire's appraisal had minimal data concerning the comparables, and he testified he relied on public records and did not confirm the sales with a party involved in each transaction.

The Board of Review also asked Brookshire whether he was retained prior to or subsequent to the Board of Review protest and hearing. He indicated he was retained following that period. It further questioned whether he thought it unusual that he used three of the same sales listed in the Board of Review petition.

The Board of Review asked if he considered or should have used bank sales for comparables. Brookshire testified he did look at some bank sales but they had sold for two- to two-and-a-half times more than what he believed the subject was worth. He concluded that "based on that fact alone they were not comparable.” Further he testified “that is why office rents, and office and former bank sales apply.” This testimony indicates Brookshire may have had a predetermined value for the subject property and then sought out data to support that conclusion.

Brookshire also developed the income approach to value. (Ex. 1, pp. 43-54). He relied on four leases in Ankeny and concluded a market rental rate of $11.00 per square foot. (Ex. 1, pp. 45-48). His comparables are summarized in the following table.

Property	Use	Size(SF)	Net Rent Rate/SF / Date of Lease
Subject	Credit Union	15837	NA
1 - 1605 SE Delaware Ave	Retail	5039	$11.00 / 2017
2 - 1609 N Ankeny Blvd	Medical	5000	$9.00 / 2016
3 - 1605 SE Delaware Ave	Chiropractor	3800	$9.50 / 2015
4 - 2701 SE Convenience Blvd	Various Flex	2000-4000	$9.00 / 2016

The leases were of multi-tenant retail or medical office buildings. Two leases (Leases 1 & 3) were located in the same multi-tenant building. Brookshire agreed that bank space is superior in quality of construction to his selected comparables, and would therefore have higher rental rates. He concluded this based on Sale B5 from his sales comparison approach. He argued rents for banks would be 50% – 75% greater than non-bank office space but believed the increase in rent would only apply to the portions of the subject that he allocated to the banking operations. (Ex. 1, p. 50). Brookshire reported upward adjustments would be warranted for quality (bank space) of 20% and the contributory value of the basement of 10%, but does not show his adjustments. (Ex. 1, p. 50). After adjustments, he reports the indicated net rents would range between $10.80 and $13.20 per square foot. He opined to the lower end of this range, $11.00 net rent per square foot; or an annual market rent of $174,097. (Ex. 1, p. 50).

The Board of Review was critical of these leases since none of the comparable rents were bank properties, they all lacked basements, and because Brookshire admitted they were inferior in quality of construction to a bank. It also questioned why Brookshire did not use bank properties for comparison. Brookshire testified rents for office space were most comparable to the subject because approximately 70% of the subject was used for office space, but he later admitted leases of similar bank properties would have been preferred if similar to the subject. However, he asserted such a sale or lease does not exist. He further testified bank leases were analyzed but consisted of newer buildings located in high profile retail areas; and therefore were not comparable to the subject.

Veridian asserted Brookshire adjusted for the differences between the subject and his comparables. It believes Brookshire made fewer adjustments than Ramsey which was the result of more similar comparables. (Veridian Brf. p. 7).

Brookshire estimated a vacancy rate of 7.5% based on CBRE Market Survey for Class B and A office space in Ankeny. This survey indicated a range of vacancy between 6% and 18%. A management expense of 4.0%, a leasing commission expense of 2.5%, and reserves for replacement expense of 2.5% were all taken into consideration in his calculation of a net operating income (NOI). (Ex. 1, p. 51). Other than the vacancy rate, Brookshire did not provide any market data or rational for his estimates.

Brookshire used a capitalization rate of 8.5%, which he supported by using the band of investments calculation (8.2%) and review of CBRE Market Survey (8.52%). (Ex. 1, p. 53). He did not exclude taxes as an expense and did not load the capitalization rate for his analysis, despite acknowledging his appraisal was for ad valorem purposes. Brookshire concluded an opinion of value by the income approach of $1,725,000. (Ex. 1. p. 54).

Brookshire gave consideration to both the sales comparison and income approaches and reconciled a conclusion of value of $1,700,000 as of January 1, 2017.

<u>Ramsey</u>

Ramsey developed all three approaches to value, relied primarily on the sales comparison approach, and opined a final market value of $3,800,000 for the subject property as of January 1, 2017.

Ramsey completed a market analysis and supplied a variety of income, population, and traffic count data for subject's area. (Ex. B, pp. 25-34).

In his cost approach to value, Ramsey considered six land sales in Ankeny that occurred between December 2013 and January 2018. The land sales ranged in size from 1.28 to 6.00 acres and had sale prices from $4.86 to $15.25 per square foot. (Ex. B, p. 61). Four of the sales were purchased for bank sites; one site had a different use but was included due to its similar size; and one site was included because of its location at the same intersection as the subject. Ramsey concluded a total land value, as if vacant, for the subject of $1,900,000. (Ex. B, p. 68).

Veridian was critical of the sales mostly for being smaller in size and asserting they were in superior locations. Veridian asserted that if Ramsey would have relied on the two land sales proposed by Brookshire, his cost approach conclusion would have been $800,000 less. (Veridian Brfs.; Exs. 3 & 4). The Board of Review disputed this claim because no adjustments were made to these two comparables for differences between them and the subject site. The Board of Review also questioned the comparability of these sites to the subject; and how these sites are used. (BOR Post Hearing Brf. p. 11).

Using MARSHALL VALUATION SERVICE (MVS),[2] Ramsey arrived at the subject's replacement cost new (RCN) of $4,207,963. He calculated a depreciated value of the improvements and site improvements to be $1,823,398. (Ex. B, p. 70). He did not apply any functional or external/economic obsolescence, but concluded the property had 60% physical depreciation based on the age/life method assuming the property is 30 years old with a useful life of 50 years. (Ex. B, p. 69). Veridian was critical of his lack of obsolescence and believed the subject was built specifically for the last user and would not be fully utilized by most banks or potential purchasers. Ramsey asserted other bank buildings similar to the subject are located in the metro area but had not recently sold. He believed the subject's improvements would have appeal to users, and asserted Veridian's continued use of the property demonstrated a market for the property as a bank. He asserted other financial institutions would have similar needs.

[2] MVS is a national cost handbook.

Ramsey concluded a value of $3,700,000 by the cost approach.

In his sales comparison approach, Ramsey relied on five sales all built as banks and purchased for continued bank use. (Ex. 1, pp. 71-80). The following table summarizes Ramsey's sale transactions.

Address	Year Built	GBA	Sale Date	Sale Price	SP/SF	Adjusted SP/SF
Subject	1986	15,827	NA	NA	NA	NA
R1 – 4885 Mills Civic, WDM	2001	3633	Dec-17	$2,050,000	$564.27	$293.42
R2 – 3820 8th St SW, Altoona	2006	4934	Oct-16	$2,635,000	$479.34	$278.02
R3 – 3800 100th St, Urbandale	1997	4928	Apr-15	$1,050,000	$213.07	$189.63
R4 – 10101 University Ave, Clive	1991	12,792	Sep-15	$3,274,000	$255.94	$197.07
R5 – 6260 Mills Civic, WDM	2007	4904	Jun-16	$2,600,000	$530.18	$302.20

Ramsey testified that because the subject was used as a bank/credit union it was important the comparable sales have a similar use. All five sales were smaller in size compared to the subject. The sales were all adjusted downward to reflect the lower price per square foot for larger sized properties like the subject. Ramsey relied on the MVS for estimates of size/cost relationship differences to arrive at his size adjustments. Veridian was critical of the size of Ramsey's comparables and believes that Brookshire's comparables are more similar to the subject due to being more similar in size and therefore not requiring size adjustments. Veridian further believed this supported its contention the subject is too large and suffered from functional obsolescence. Ramsey testified Comparable 4 was similar in size and had a large office area like the subject.

Ramsey made adjustments for differences between the comparables and the subject for property rights, market conditions, size, age/condition, and land/building ratio. (Ex. B, p. 72).

Sales R1, R3, and R4 sold with leases in place. He adjusted sales R1 and R4 for property rights. Ramsey asserted the adjustments were supported by the difference in reported or estimated capitalization rates for these sales compared with the market capitalization rate he estimated for the subject. Ramsey believed Sale R3 was not affected by its lease in place and therefore made no adjustment for this difference. Veridian criticized the use of Sales R1 and R4, asserting the leases in place were actually sale leasebacks and more akin to a financial transaction than a “normal” sale as required by Iowa Code § 441.21. (Veridian Brief pp. 8-10). However, Iowa law does not make these unusable so long as the condition is "adjusted to eliminate the effect” it may have on the market value. §441.21(1)(b)(1).

Market condition adjustments were made to reflect changes in value between the date of value for the subject and the time of the sale for each of the comparable properties. Sale R1 was determined to have superior market conditions at the time of its sale and was therefore adjusted downward. Sale R2 was sold contemporary to the subject’s valuation and no adjustment was made for market conditions. Sales R3, R4, and R5 were adjusted upward for market conditions. Ramsey included a table showing changes in capitalization rates for similar properties to support these adjustments. (Ex. B, pp. 78-79). Location adjustments were made based on several factors also summarized in a table, including traffic counts, population growth, frontage and access, and if the property had a corner location. (Ex. B p. 78). A final conclusion was given in the table that indicated if the overall location was inferior, similar, or superior to the subject. Ramsey indicated during the hearing that Sale R3 had the least similar location due to its inferior access. Sale R3 was located on a corner lot with good traffic counts, but was inferior due to a lack of direct street access; it can only be accessed by driving through an adjoining property.

Ramsey listed the subject’s original date of construction as well as its remodel date. Sale R4 was remodeled in 2011; Sale R5 was in good condition; and the subject and the other comparables are listed in average condition. Ramsey included a table showing the subject and each of the comparables, along with an estimated effective age for each property. Based on the differences in effective age, he made adjustments for age and condition.

The final factor Ramsey adjusted for was the land-to-building ratio. Sale R2 bracketed the subject’s land-to-building ratio on the high side and the remaining sales had smaller ratios and therefore adjusted upward. Ramsey indicated an adjustment of $5.00 per square foot was made for the surplus land. (Ex. B, p. 79).

After adjustments, Ramsey concluded a market value of $240 per square foot of above-grade area. He concluded a value $3,800,000 for the subject property by the sales comparison approach. (Ex. B, p. 80).

On cross-examination when questioned whether Ramsey could have used office buildings in his sales comparison approach and then made an adjustment for the bank portion of the property, Ramsey testified “the subject property operates as a bank with ancillary space used for office, loan closings, IT, training, and investment services, etc. Taking an office building and trying to add a bank is apples and oranges as far as how to approach it”.

In developing the income approach to value, Ramsey relied on nine leases from around the Des Moines metropolitan area and concluded a market rental rate of $23.50 per square foot of above-grade building area. (Ex. B, p. 82). The leases were entered into between 1999 and 2014; three were entered into between 2013-14. Ramsey noted the lowest rate was renewal of a lease dating from 1993 and the upper end was rent charged on the basis of cost for new construction of a bank facility. (Ex. B, p. 81). Veridian was critical of the analysis because the bank name was reported as “confidential” and addresses were not provided and questioned its reliability. Though he did not disclose the actual tenants for each lease, he noted all of which were bank properties, “Tenants for these leases include most of the local banks in Des Moines: Veridian, West Bank, Two Rivers, Bankers Trust, Bank of the West, and other local banks.” (Ex. B, p. 81). Veridian also believed the data was unreliable because the leases were 10- to 20-year-old. (Veridian Brf. p. 14). Ramsey indicated he used a number of leases due to the age of some. Further, the Board of Review believed this is a mischaracterization of the data, noting the leases were in place as of the 2017 valuation date and therefore relevant. (BOR Post Hearing Brf. p. 15).

The comparable leases had ranges between $10.59 and $38.91 per square foot. Removing the high and low rents, Ramsey reported an average rent of $25.89 per square foot and a median rent of $24.00 per square foot. In addition to the confidential bank rents included in the report, Ramsey stated that new banks are typically leased between 10% and 11% of the cost to build. He concluded a market rent for the subject of $23.50 per square foot. (Ex. B, p. 82).

He adjusted the total revenues for vacancy and collection loss of 6.25%, operating expenses and insurance of $2.20 per square foot, management fee of 3%, and reserves at $0.31 per square foot; arriving at a NOI of $330,448. He provided support for vacancy and collection loss, expenses, and reserves.

Using the Mortgage-Equity Technique, investor surveys, and market extraction, Ramsey concluded a capitalization rate, loaded for taxes, of 8.71%. (Ex. B, p. 87). He concluded a value of $3,800,000 by the income approach.

Ramsey gave all three approaches to value consideration in his final reconciliation and concluded an opinion of market value of $3,800,000 as of January 1, 2017.

Analysis and Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2017). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a & b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Veridian Credit Union asserts the subject property is over assessed. In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive, and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted).

I. General Principles of Assessment Law

a. Valuation under Iowa Code section 441.21

In Iowa, property is assessed for taxation purposes following Iowa Code section 441.21. Iowa Code subsections 441.21(1)(a-b) require property subject to taxation to be assessed at its actual value, or fair market value. *Soifer*, 759 N.W.2d at 778. "Market value” is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. § 441.21(1)(b).

In determining market value, “[s]ales prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at market value.” *Id*. Using the sales price of the property, or sales of comparable properties, is the preferred method of valuing real property in Iowa. *Id*.; *Compiano v. Polk Cnty. Bd. of Review*, 771 N.W.2d 392, 398 (Iowa 2009); *Soifer*, 759 N.W.2d at 779 n. 2; *Heritage Cablevision v. Bd. of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). “[A]bnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value . . . .” § 441.21(1)(b). Abnormal transactions include, but are not limited to, foreclosure or other forced sales, contract sales, discounted purchase transactions, or purchases of adjoining land or other land to be operated as a unit. *Id*.

The first step in this process is determining if comparable sales exist. *Soifer*, 759 N.W.2d at 783 (emphasis added). If PAAB is not persuaded as to the comparability of the properties, then it “cannot consider the sales prices of those” properties. *Id*. at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977)). “Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court.” *Id*. at 783 (*citing Bartlett & Co. Grain*, 253 N.W.2d at 94).

Similar does not mean identical and properties may be considered similar even if they possess various points of difference. *Id*. (other citations omitted). “Factors that bear on the competency of evidence of other sales include, with respect to the property, its ‘[s]ize, use, location and character,” and, with respect to the sale, its nature and timing. *Id*. (other citations omitted). Sales prices must be adjusted “to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments.” *Id*. (other citations omitted). “[A] difference in use does affect the persuasiveness of such evidence because ‘as differences increase the weight to be given to the sale price of the other property must of course be correspondingly reduced.’” *Soifer*, 759 N.W.2d at 785 (quoting *Bartlett & Co. Grain*, 253 N.W.2d at 93).

“A party cannot move to other-factors valuation unless a showing is made that the market value of the property cannot be readily established through market transactions.” *Wellmark, Inc. v. Polk Cnty. Bd. of Review*, 875 N.W.2d 677, 682 (Iowa 2016). Where PAAB is convinced comparable sales do not exist or cannot readily determine market value, then other factors may be used. § 441.21(2); *Compiano*, 771 N.W.2d at 398 (citing *Soifer*, 759 N.W.2d at 782); *Carlon Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997). If sales cannot readily establish market value, “then the assessor may determine the value of the property using the other uniform and recognized appraisal methods,” such as income and/or cost. § 441.21(2).

b. Burden of Proof

Under Iowa law, there is no presumption that the assessed value is correct. § 441.37A(3)(a). Nonetheless, under section 441.21(3) (2017), the party contesting the assessment generally has the burden of proof.

> For assessment years beginning before January 1, 2018, the burden of proof shall be on the complainant attacking such valuation as excessive, inadequate or capricious. […] [W]hen the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

§ 441.21(3)(b)(1).

As noted in *Compiano*, the statute requires the evidence offered by the disinterested witnesses to be competent to shift the burden of proof. 711 N.W.2d at 398. To be competent, the evidence must comply with the statutory scheme for property assessment valuation. *Id*. The statutory scheme begins with valuation using sales of comparable properties. *Id*. Veridian did not offer competent evidence from two disinterested witnesses. Therefore, it bears the burden of proof.

II. Analysis of the Appraisals

Veridian asserts the subject property can be valued using the sales comparison approach to valuation. (Veridian Brf. p. 4). The Board of Review does not make a similar assertion. The parties' primary disagreement is how the subejct property is currently used and what impact that use has on the marketability and value of the property.

Veridian's overarching argument is that a buyer of this property will not purchase the property solely as a bank and that the Board of Review's valuation of it as such results in a value that is too high. It asserts the Board of Review has forsaken any other issues of comparability in its analysis and placed sole reliance on use in its valuation of the subject. It believes use is one factor, amongst many, that should be considered in a property's valuation. (Veridian Brf. pp. 4-6).

The use of property is a fundamental premise of valuation that informs the appraiser's selection of comparable properties. That is why an appraiser completes a market analysis and highest and best use analysis before researching and analyzing sales. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 379-80 (14th ed. 2013). For example, in *Homemakers Plaza, Inc. v. Polk County Board of Review*, Homemakers' expert witnesses determined the subject property's highest and best use would be an industrial warehouse as opposed to its current use as a large retail furniture store. 2013 WL 105220 at *6 (Iowa Ct. App. Jan. 9, 2013). As a result, this caused them to rely on warehouses in their valuation approaches. *Id*. The Court of Appeals found those experts less persuasive and stated the appraisers "overlooked how the property is currently being used. *Id*. at *9. In light of its importance in valuation and consistent with precedential Iowa case law, we think it would be wrong to diminish the importance of a properties' use in assessment. While use may not be solely determinative when evaluating properties for comparability, it is an important factor.

"[A]ssessors are permitted to consider the use of property as a going concern in its valuation." *Riso v. Pottawattamie Cnty. Bd. of Review*, 362 N.W.2d 513, 517 (Iowa 1985). In *Maytag Co. v. Partridge*, 210 N.W.2d 584 (Iowa 1973), an expert opined that the assessed value of Maytag's machinery should be based on its secondary resale value. The Iowa Supreme Court rejected that approach, noting "the rule is that an assessor must also consider conditions existing at the time and the condition of the property in which the owner holds it." *Id*. at 589. When an assessor values property as a going concern, "he is merely following the rule that he must consider conditions as they are." *Soifer*, 759 N.W.2d at 788 (quoting *Maytag Co.*, 210 N.W.2d at 590). The assessor is “recognizing the effect of the use upon the value of the property itself. He is not adding on separate items for good will, patents, or personnel.” *Id*. The Iowa Supreme Court recently reaffirmed this principle in *Wellmark*, 875 N.W.2d at 670-71. In that case, Wellmark’s experts valued the single-occupant corporate headquarters “by using an analysis of multitenant office buildings,” reasoning that a purchaser would likely convert the property to a multitenant use. *Id*. at 671. The *Wellmark* Court detailed the conceptual and legal arguments surrounding value-in-use and value-in-exchange. *Id*. at 673-75. After surveying case law and statutory mandates, the Supreme Court “embrace[d] the view that the property should be based on its current use.” *Id*. at 682. The Court did not explicitly adopt or reject the value-in-use premise. Instead, based on the lack of readily available market for Wellmark’s building, the Court stated the ““value should be based on the presumed existence of a hypothetical buyer at its current use.” *Id*. at 683. It noted that “[c]urrent use is an indicator that there is demand for such a structure.” *Id*. The Court rejected Wellmark’s experts’ opinions valuing the property as a multitenant office building and, instead, concluded the property should be valued based on its current use as a single-occupant office building. *Id*. at 682-83.

a. Brookshire Appraisal

Veridian has not offered the competent testimony of two disinterested witnesses showing the subject’s assessment is excessive, therefore it retains the burden of proof under section 441.21(3). The sole evidence in support of Veridian’s position is Brookshire’s appraisal, valuing the subject property at $1,700,000.

i. Sales Comparison Approach

Brookshire asserted the subject was an over-improvement for its current use as a branch bank.

The sales Brookshire used undisputedly differ in use from the current use of the subject property, which is operating as a bank/credit union. The sales were either multi-tenant office spaces or former banks that sold and were converted to a different use.

Veridian asserted property does not need to have the same use to be comparable, and points to *Soifer,* 759 N.W.2d at 785. (Veridian Brf. p. 5). While we agree comparables do not need to be identical and that the use of properties likewise need not be identical, we find that a difference in use does affect the persuasiveness of such evidence. *Id.* The *Soifer* court stated, "as differences increase the weight to be given to the sale price of the other property must of course be correspondingly reduced." *Id*. *(citing Bartlett & Co. Grain*, 253 N.W.2d 86, 93 (Iowa 1977)). In *Soifer*, the Court found Blanchfield undervalued the Soifers' fast food restaurant because he primarily relied on properties that, although formerly fast food restaurants, were not used as fast-food restaurants after their sale. *Id*. at 791. It stated that their "sales prices did not completely capture the value of the properties in their present use" and undervalued the subject property. *Id*. The change in use reduces the persuasiveness of these sales. *Hy-Vee, Inc. v. Dallas Cnty. Bd. of Review*, 2014 WL 4937892 (Iowa Ct. App. Oct. 1, 2014) (noting that the use of comparables need not be identical to the subject, but a difference in use affects the persuasiveness of the sale) (citations omitted). In *Hy-Vee*, the Court of Appeals concluded the Board of Review's expert's report that relied on sales showing continued operation as grocery stores enhanced the persuasiveness of the evidence. *Id*. at *5. It was not persuaded to rely on Hy-Vee's experts' who "each compared only one or two grocery stores, which either had been vacant, were re-purposed after the sale, or were much smaller in size and scale than the Hy-Vee supermarket." *Id*. at *2.

While the size and age of Brookshire's comparables were similar, their use and overall market appeal was different. None of his sales show continued use as a bank. Brookshire admitted bank space sells for a premium, and here the subject property's current use is as a bank branch/credit union. Brookshire specifically noted in Sale B5 "the sale price per square foot indicates a premium of upwards of 50% to 75% for bank space vs. office space." (Ex. 1, p. 63). But he based this on the sale of a bank that was converting uses.

Additionally, while Brookshire asserted Sale B3 was his best comparable because it was a former bank, this property was not purchased for continued bank use. According to data in Brookshire's own appraisal it was a 1031 exchange and suffered from deferred maintenance that impacted the sales price. Moreover, for Sale B3, and possibly others that changed use from banks to office space, Brookshire failed to account for any post-sale expenditures made by purchasers of the property to convert them to other uses.

"A knowledgeable buyer considers expenditures that will have to be made upon purchase of a property because those costs affect the price the buyer agrees to pay." THE APPRAISAL OF REAL ESTATE 412. These expenditures can include, but are not limited to, costs to cure deferred maintenance, costs to demolish and remove a portion of the improvements, and costs for additions or improvements to the property. *Id*. "The relevant figure is not the actual cost that was incurred but the cost that was anticipated by both the buyer and seller." *Id*. (emphasis added). Notably, THE APPRAISAL OF REAL ESTATE does not limit the application of a post-sale expenditure adjustment only to instances of deferred maintenance. Without adjustments, these comparable sales prices essentially reflect the value of vacant buildings potentially in need of remodeling or renovation for a different use. As such, we do not believe they reflect the current use of the subject property.

We also note Brookshire's data for his comparable properties was limited and lacked verification from parties involved in the transactions. Additionally, we question his adjustment process. He made minimal adjustments and in general does not account for all differences to the subject. We specifically note that no adjustments were made for differences in site size. Veridian and Brookshire assert the subject site is too large for its use and were not fully utilized. Brookshire concluded the additional site size had no contributory value. PAAB does not agree with Brookshire's assertion the additional site size would have no contributory value due to the placement of the improvements on the site. This does not appear to be reflective of the market and therefore would result in a below market value opinion for the subject. We also question Brookshire's lack of condition adjustments. Sale B3, which Brookshire contends is most similar to the subject, also suffered from deferred maintenance that impacted the sales price but he made no adjustment to the condition in his analysis.

For the foregoing reasons, we decline to rely on Brookshires sales comparison analysis as a reliable indication of the subject property's market value.

ii. Other Approaches

Even if the sales comparison approach alone could be used to determine the assessment in this case, we have similar reservations with Brookshire's income approach. Again noting he provided limited information regarding the comparables; that the lease properties had a different use than the subject property; and that it does not appear adjustments were made to account for all of the differences between them and the subject property.

While it is not required to use comparables with an identical use to the subject, we find the record is indisputable regarding the importance of use in this valuation. Because Brookshire relied on comparable sales and leases which were different in use to the subject, even though he acknowledged banks command a premium in the market, we find his conclusions unpersuasive. Further and maybe most important was Brookshire's own testimony describing why he did not use bank sales and leases. He stated bank sales sold for between two and two-and-a-half times more than what the subject was worth, and "based on that fact alone they were not comparable". Ultimately we find they did not conform to his opinion of subject's value and may suggest a predetermined value by Brookshire.

Finally, Brookshire did not develop a cost opinion for the subject property. He indicated this was based on the age of the property, yet his appraisal makes no note of the renovations and additions made to the property in 2001. Nevertheless, he claims to have analyzed several site sales prior to his determination of highest and best use. Brookshire testified that in addition to these land sales, he also considered the manner in which the site was being utilized, with the improvements located toward the middle of the site, as well as considering the larger than typical site area of the subject as currently developed. PAAB notes that the manner in which the site was currently improved would not be considered in the sites valuation "as if vacant". He opined the improvements contribute to the value of the site; however, we note Ramsey's opinion of site value "as if vacant" was greater than Brookshire's total "as is" value opinion.

b. Ramsey Appraisal

The Board of Review submitted an appraisal prepared by Ramsey, which included all three approaches to value. His conclusion of site value was based primarily on land sales that were used to develop branch banks; and his improved comparable sales and leases were all bank properties. Veridian contends he placed too much emphasis on how the property was being used to the exclusion of other factors. We disagree. While many of his comparable sales and leases are smaller in size and different in location, his report gives rationale and support for adjustments and most differences are bracketed by the comparables. However, we note all appear overall superior to the subject and receive net downward adjustments. Nevertheless, Ramsey's selection of comparables enhances rather than undermines the persuasiveness of his evidence and accounts for the present use value of the subject property. *See, Hy-Vee v. Dallas County Bd of Review*, 2014 WL 4937892 at *5 (Iowa Ct. App Oct. 1, 2014) (noting that the use of comparables need not be identical to the subject, but a difference in use affects the persuasiveness of the sale) (citations omitted).

III. Conclusion

Here, using the sales comparison approach and considering the subject property's current use as a bank/credit union, it appears that Brookshire's sole reliance on multi-tenant office or bank conversion properties results in a value that fails to reflect the conditions as they are. Even with his sale adjustments, we are not persuaded his appraisal offers a reliable indication of the subject property's fair market value. Notably, Ramsey's Sale 4 is the only closely sized operating bank sale in the record. We find this sale to be the most reliable and persuasive in the record. After adjustments, Ramsey concluded this property indicated a value of $197.07 per square foot for the subject property, which would still result in a value that exceeds the current assessment.

We acknowledge the testimony and evidence indicating the subject property is likely an over improvement considering its current use. We tend to believe Ramsey's appraisal failed to sufficiently acknowledge that issue, but we recognize the assessment is well-below Ramsey's conclusion of value.

Having considered the evidence, testimony, briefs, and the record in full, we conclude Veridian has failed to carry its burden to show the subject property is assessed for more than authorized by law. Therefore, we affirm the assessment.

Order

PAAB HEREBY AFFIRMS the Polk County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2017).

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

____
Dennis Loll, Board Member

____
Elizabeth Goodman, Board Member

____
Karen Oberman, Board Member

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